UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2001/66/Add.1
14 November 2000

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-seventh session
Item 11 (a) of the provisional agenda

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF TORTURE AND DETENTION

Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/43

Visit to Azerbaijan

GE.00-15832 (E)

CONTENTS

	Paragraphs	Page
Introduction	1 - 5	3
I. THE PRACTICE OF TORTURE: SCOPE AND CONTEXT	6 - 69	4
A. General issues	6 - 10	4
B. Information concerning police stations and temporary detention facilities	11 - 39	5
C. Information concerning remand centres	40 - 50	12
D. Information concerning prisons	51 - 63	14
E. Excessive use of force by the police	64 - 69	17
II. PROTECTION OF DETAINEES AGAINST TORTURE	70 - 104	19
A. Prohibition of torture	70 - 77	19
B. Arrest and detention	78 - 92	21
C. Complaints procedures	93 - 104	25
III. CONCLUSIONS AND RECOMMENDATIONS	105 - 120	28
A. Conclusions	105 - 119	28
B. Recommendations	120	30

Introduction

1. Following a request by the Special Rapporteur in November 1999, the Government of the Republic of Azerbaijan invited him to undertake a fact-finding mission to the country within the framework of his mandate. The objective of the visit, which took place from 7 to 15 May 2000, was to enable the Special Rapporteur to collect first-hand information from a wide range of contacts in order to better assess the situation regarding torture and ill-treatment in Azerbaijan and thus to be in a position to recommend to the Government of Azerbaijan a number of measures to be adopted with a view to putting an end to torture and other forms of ill-treatment.

2. During his visit, the Special Rapporteur met the President of the Republic of Azerbaijan, H. E. Mr. Heydar Aliyev; the Minister of Internal Affairs, Lieutenant-General Ramil Usubov; the Minister of National Security, Mr. Namig Abbasov, as well as the head of the Investigation Department, Mr. Mansurov; the Minister of Justice, Mr. Fikret Mammedov, as well as the Deputy Minister of Justice and head of the department on the implementation of court decisions, General Aydin Gasimov; the President of the Supreme Court, Ms. Sudaba Gasanova, as well as the Chairwoman of the Appeal Court, Ms. Gulzar Rzayeva; the General Prosecutor, Mr. Zakir Garalov, as well as the Deputy General Prosecutor, Mr. N. Allakhverdiyev; the Deputy Minister of Foreign Affairs, Mr. Khalaf Khalafov; the Deputy Minister of Defence, Colonel Mamed Beidullayev; the head of the Law Enforcement Bodies Department of the Executive Administration of the President, Mr. Fuad Alesgerov; members of the Commission on Human Rights of the *Milli Majilis* (Parliament) of Azerbaijan, including its Chairman, Mr. Kerim Kerimov; the head of the Baku City Police Department, Mr. Alyiev Magerram; the first deputy head of the Baku City Police Department, Mr. Yashar Aliyev; the head of the Department for Public Security of the Baku City Police Department, Mr. Javanshir Mamedov; the head of the Department to Combat Organized Crime, Mr. Sevindik Safarov. The Special Rapporteur also met members of the Human Rights Institute of the Academy of Sciences, including its Director, Mr. Rovshan Mustafayev.

3. During his stay in Baku, the Special Rapporteur visited the following places where persons deprived of liberty are held: Gobustan Prison; three remand institutions: remand centre[1] No. 1, also known as Bailov Slzo, remand centre No. 3, also known as Shuvelan Slzo, and the detention facility of the Ministry of National Security; the four provisional detention wards located in Baku, i.e. the Department to Combat Organized Crime, the Baku City Police Department, also known as "Gorotdel",[2] the Narimanov Police Department and the detention facility of the Ministry of National Security; finally, the Special Rapporteur visited the following regional and local police offices: the Baku City Nizami district police office and its unit No. 25, the Baku City Sabunçu district police office and its unit No. 12, Baku City Police unit No. 9 and the Baku City head police receiver/distributor in Binagadi.

4. The Special Rapporteur met persons who themselves or whose relatives had allegedly been victims of torture or other forms of ill-treatment and he received verbal and/or written information from non-governmental organizations (NGOs), including the following: Human Rights Centre of Azerbaijan, the Trade Union of Journalists of Azerbaijan, the National Committee of the Helsinski Citizens' Assembly, the Human Rights Department of the Institute for Peace and Democracy. Finally, he met lawyers from the Viza Advocates Law Firm.

5. The Special Rapporteur wishes to thank the Government of the Republic of Azerbaijan for having invited him and for extending full cooperation during his mission, thus greatly facilitating his task. He also wishes to express his gratitude to the Coordinator ad interim of the United Nations Development Programme and his staff for their logistical and other support.

I. THE PRACTICE OF TORTURE: SCOPE AND CONTEXT

A. General issues

6. In recent years, the Special Rapporteur had received information according to which law enforcement officials routinely tortured persons in pre-trial custody in order to punish them, extract confessions or extort bribes from them or their family members. Those accused of treason or other political offences were allegedly systematically tortured. Such abuse was said to occur immediately after arrest, but could also continue for months throughout prolonged periods of pre-trial detention. Indeed, detainees were reportedly frequently detained in temporary holding facilities without being charged well beyond the period prescribed by law through frequent recourse to extensions. It was also alleged that the police pressured detainees either not to seek counsel or to accept State-appointed lawyers who might not work for their clients' best interest. Official forensic medical expertise was reported to be rare and difficult to obtain even when requested by a lawyer. According to the information received, coerced confessions were used by the Prosecutor General's Office as evidence to secure convictions at trial. That Office was said rarely to investigate allegations of torture, and even less frequently to prosecute police officers allegedly responsible. Finally, the Special Rapporteur had also transmitted to the Government information according to which conditions of pre-trial detention facilities amounted to cruel and inhumane treatment (see E/CN.4/2000/9, paras. 37 et seq.).

7. The request by the Special Rapporteur to visit the country also echoed the concerns expressed by the Committee against Torture (CAT) in November 1999 after consideration of the initial report on the measures taken to implement the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment submitted by Azerbaijan (CAT/C/37/Add.3). The CAT concerns included the "numerous and continuing reports of allegations of torture and other cruel, inhuman and degrading treatment and punishment committed by law enforcement personnel [and] the apparent failure to provide prompt, impartial and full investigation into numerous allegations of torture that were reported to the Committee, as well as the failure to prosecute, where appropriate, the alleged perpetrators (ibid., para. 5 (b) and (c))." Accordingly, a working group chaired by the head of the Office of the President was established by presidential decree dated 10 March 2000. It prepared a note entitled "Information concerning the implementation of the recommendations of the CAT and the verification of remarks of the Amnesty International report on Azerbaijan" (hereafter: Information note) that was provided to the Special Rapporteur at the beginning of the mission. The information contained in this note will be reflected in the report as appropriate.

8. Furthermore, the Republic of Azerbaijan edited a booklet entitled "Compilation of documents related to recommendations of the United Nations Committee against Torture and Amnesty International concerning the report of the Republic of Azerbaijan in the field of implementation of the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" which contains not only the above-mentioned

recommendations, but also several decisions taken by the President, the General Prosecutor's Office and the Plenary of the Supreme Court. The Minister of Justice indicated that this booklet would be widely distributed amongst law enforcement officials. He also stressed the importance of educating and disseminating relevant information to the public in general with respect to torture issues. According to the Minister, ordinary people had yet to understand that torture was an illegal and unacceptable practice.

9. The President of the Republic in his meeting with the Special Rapporteur recognized that there still existed some shortcomings, but he repeated his own commitment to take the necessary measures. In this context, he welcomed the visit of the Special Rapporteur to help him assess whether the decisions taken by higher officials were implemented on the ground. Similarly, a large number of officials met by the Special Rapporteur referred to findings of CAT as well as of international non-governmental organizations (NGOs) and stressed their willingness to tackle the problem, if any. Non-governmental sources recognized the Government's recent resolve to end the practice of torture, even if the steps taken were still greeted with caution. For example, an extensive legal reform aimed at bringing the national legislation into line with international standards was under way at the time of the visit of the Special Rapporteur. Official interlocutors referred to the fact that international experts, in particular from the Council of Europe, were closely associated with that process. The Deputy Minister of Foreign Affairs and the Minister of Justice nevertheless recognized the need for legal reforms to be accompanied by structural changes in public offices. Efforts to change the approach and mentality of law enforcement officials were also stressed. In that respect, the Special Rapporteur noted with concern that non-governmental organizations seemed not to have been involved in this process of legal reform which was said to have taken place with a lack of transparency. The burden inherited from the Soviet period in terms of structures and habits was also often presented by officials as an obstacle to be overcome.

10. One of the main problems which was drawn to the Special Rapporteur's attention was the high level of armed criminality that law enforcement authorities were said to have had to face after independence in 1991. The Minister of Internal Affairs said that around 18,000 firearms had been collected from the public between 1994 and 1996. He stressed that Azerbaijan was now one of the States of the Commonwealth of Independent States (CIS) with the lowest rate of criminality. This was partly explained by the fact that, according to the Minister, over the last few years 90 per cent of crimes had been solved.

B. Information concerning police stations and temporary detention facilities

1. General information

11. According to the legislation in force at the time of the mission, a person could be arrested and detained for up to three hours in a police station for identification purposes. After this identification period, the person must be transferred to one of the provisional detention (or isolation) wards, also called temporary detention facilities and formerly known as IVS, where she or he could be kept under investigation for up to three days. These places of detention are under the jurisdiction of the Ministry of Internal Affairs. According to the General Prosecutor, article 129 of the Criminal Code provides that for the most serious crimes, a prosecutor can extend this preliminary detention period for investigation purposes up to 10 days. He added that

with respect to nine types of crimes, a prosecutor could legally prolong the period of investigation up to 18 months. The General Prosecutor recognized that prosecutors may sometimes facilitate wrongdoing by the police by, for example, extending this period of preliminary detention. He believed that this was due to the mentality inherited from the previous regime.

12. At the end of this 3- to 10-day period, the person should be either released, or charged and sent to an investigative isolator under the Ministry of Justice's jurisdiction. Detainees met by the Special Rapporteur during his visits to remand centres said that they had been detained in provisional detention wards between 3 and 15 days. Most had been detained for more than the normal period of three days. Most allegations of torture received by the Special Rapporteur concerned the preliminary period of detention of suspects in these wards. As indicated above, there exist only four such wards in Baku, i.e. at the Baku City Police Department ("Gorotdel"), at the Ministry of National Security, at the Department to Combat Organized Crime and at the Narimanov Police Department, and the Special Rapporteur visited them all during the mission.

13. The Minister of Internal Affairs transmitted to the Special Rapporteur various orders he had issued in March 2000 in the field of the protection of human rights by law enforcement agencies. These orders clearly spell out the international guarantees and standards with respect to the treatment of persons under arrest. He also called for the conditions of detention in police stations and provisional detention facilities under his jurisdiction to be improved.

14. The General Prosecutor indicated that the monitoring of both police station and provisional detention wards was undertaken by his own Office. He referred to a large number of arbitrary detention cases and mentioned one specific case of torture (a person beaten to death) in which the investigator of the prosecutor's office had been dismissed for not having prevented the acts in question. Criminal charges were said to be pending against the responsible police officers.

(a) Police stations

15. On 9 May, the Special Rapporteur visited the Baku City Nizami district police office. Nobody was held there at that time. Only 26 persons had been taken to this police office during the preceding four months. From the register, it was clear that a majority of persons had been detained in this police station for more than the legally permitted three-hour period for identification purposes. It was explained to the Special Rapporteur that those detentions had been requested by the investigators and approved by the prosecutor's office. There was nevertheless no mention of such authorization in the register. According to the officer-in-charge of this office, such authorization was kept with the investigators' files on the suspects. It was also argued that most of these persons had not been formally detained, i.e. held in cells, but simply interrogated in the investigators' offices.

16. The Special Rapporteur then visited unit No. 25 which comes under the jurisdiction of the above-mentioned district police office. Persons arrested were reportedly held behind the reception desk in a basic, but ventilated and lighted room. The Special Rapporteur nevertheless

noted the existence of two pitch-black cells behind this first room which were said by the head of Nizami district police office not to have been used since independence. The Special Rapporteur nevertheless noted the presence in these cells of graffiti on the walls bearing names and recent dates, such as 4 July 1999 and 24 January 2000. A cigarette butt and some bones with the remains of cooked meat on them were also present in the cells, which had obviously been used recently. When asked, the police officers said that some of their colleagues may have been using the cells and may have written the graffiti. Subsequently, the Special Rapporteur found in the register on the entry for 24 January 2000 the same name as the one on the wall. It was explained to him that this was a very common name in Azerbaijan and was the name of the head police officer's driver, who may have been responsible for the graffiti. This explanation was not convincing. The Special Rapporteur was not able to look into several cabinet files in investigators' offices which were closed at the time of his visit and could not be opened since the officers holding the keys were away. In one of the offices behind the reception desk, the Special Rapporteur noted the presence of wooden and metal bars. He was told that these were leftover construction materials from the renovation of the building.

17. On the same day, the Special Rapporteur visited the Sabunçu district police office. Nobody was being held there at the time of his visit. In one of the investigator's offices, the Special Rapporteur found a crow bar and a knife. It was explained that they had been used to fix a broken chair. The Special Rapporteur noted that in the register a certain number of entries had no information with respect to the date and time of release or transfer of persons having been brought in. According to the officers present, a notification could not be entered into the register as long as the paperwork was not completed. The head of this office recognized that the fact that the persons had been sent back home should have been recorded. He indicated that the officers responsible would be reprimanded for this omission. Other minor mistakes were noticed by the Special Rapporteur, such as two individuals being brought in at 8 a.m. with respect to a complaint filed the same day at 10 a.m. Except for the cases where there was no entry indicating when the persons had been transferred or released, 41 persons had been detained in this police station and, according to the register, kept for up to three hours.

18. The Special Rapporteur also visited the unit No. 12 of the Sabunçu district police office where he observed the presence of three pitch-black cells. According to the officers in charge of the unit, no light was necessary because persons could only be kept there for three hours. The Special Rapporteur was not reassured by this explanation.

19. The Special Rapporteur was shown some videotaping material used to record evidence, which was then produced in court. Officials of the Department to Combat Organized Crime informed him that they were also using that kind of material in their investigations. According to the information received, interrogations during preliminary investigation are sometimes recorded. This was said to be done at the exclusive discretion of the investigator.

20. The Special Rapporteur noted a candid remark made by the officer-in-charge of Baku City Police unit No. 9 at the time of the visit, who said that for the last few months police officers had been trying to be more careful in respecting the rules. It is the Special Rapporteur's belief that positive changes have indeed occurred in the past months.

(b) Temporary detention facilities

21. On 8 May, the Special Rapporteur visited the Department to Combat Organized Crime at the invitation of the authorities. This Department was created in 1994 by presidential decree in order to fight organized crime and to disband armed groups which were said to be particularly active at that time. Its 250 officers, 100 of whom are based in Baku, are now mainly dealing with cases of trafficking of narcotics, corruption and counterfeiting. According to the cell registry, 134 persons had been detained at this Department since the beginning of the year. At the time of the Special Rapporteur's visit, three persons were detained in clean cells containing beds with mattresses and blankets. No particular complaint was raised by the detainees interviewed by the Special Rapporteur.

22. On 8 May, at the invitation of the head of the Baku City Police Department, the Special Rapporteur visited its provisional detention ward, commonly known as "Gorotdel". At the time of the visit, 14 persons were detained, mostly on drug-related or counterfeiting charges, in clean, but very hot cells containing beds with mattresses and blankets. It should be noted that detainees were not separated according to whether they were first-time offenders or had been previously convicted. All detainees interviewed by the Special Rapporteur indicated that they had feared at the time of arrest or first interrogation being subjected to ill-treatment if they did not comply with their investigators' requests. Some said that they had actually been beaten at the place where they were first detained, while others said that they had been threatened with beatings if they did not sign the confession prepared by the investigators. For example, one of the detainees reported having been beaten, slapped on the face, threatened with rubber truncheons and forced to sign a confession at one of the Baku district police stations. But, fearing further ill-treatment, all detainees requested the Special Rapporteur to keep their identities and testimonies confidential. The Special Rapporteur notes with concern that their fear, well founded or not, prevented them from reporting the treatment they had been subjected to.

23. On 14 May, the Special Rapporteur returned to "Gorotdel" where 14 persons were detained. Contrary to the first visit, some detainees were sleeping on wooden planks without mattress or blanket. According to the registry book, all periods of detention which had lasted for more than two days had been authorized by a prosecutor. However, according to information received, one person was recorded in the registry book a day after his actual detention. The same fears were expressed by the detainees on this occasion as had been expressed previously: the detainees refused to either give their names or to tell the Special Rapporteur about the treatment they had been subjected to since their arrest. Some gave very convincing testimonies according to which they had been beaten and slapped, in particular by officials from "Gorotdel". Some detainees also stated that they had been asked to pay bribes.

24. During his visit to Bailov Sizo, the Special Rapporteur met two detainees who had been held in "Gorotdel" for one month and two days and for two months, respectively, charged with betrayal of the motherland and murder. Both refused to speak to the Special Rapporteur about the treatment they received while they were interrogated at "Gorotdel", for fear of reprisals.

25. On 14 May, the Special Rapporteur visited the provisional detention ward at the Narimanov Police Department where 15 persons were detained in 13 cells. The head of the ward indicated to the Special Rapporteur that all detainees were always transferred to a remand centre at the end of the three-day period. The investigators were therefore not requesting prosecutors to prolong the initial period of detention in the provisional detention ward under his authority. This seemed to be confirmed by the various registry books shown to the Special Rapporteur.

26. At Narimanov provisional detention ward, the Special Rapporteur interviewed a detainee who had been offered a lawyer at the time of his first interrogation. The lawyer was present during all the subsequent interrogation sessions. Nevertheless, it was clear that this person, like several others met during the mission in various detention places, did not understand the role and functions of a lawyer. The head of the ward recognized and regretted that State-appointed lawyers were not very active. He was therefore not surprised by the detainee's lack of understanding.

27. Finally, the Special Rapporteur visited the Baku City head police receiver distributor in Binagadi on 12 May. This centre holds, for up to 30 days, persons whose identity could not be determined in police stations during the three-hour identification period. After 30 days, if no arrest warrant is issued, the person shall be released. Thirty-one persons, mainly homeless people, were held at the time of the Special Rapporteur's visit. According to the head of the Binagadi Receiver Distributor, persons held there were not formally detained. The prosecutor's office was nevertheless said to be informed that they were there.

28. The cells visited by the Special Rapporteur were basic, dirty and had a bad odour. There was no natural light or proper ventilation system. A small hole in the door was the only source of ventilation. The head of the Binagadi Receiver Distributor told the Special Rapporteur that there was a very efficient ventilation system during the summer. Persons were sleeping on wooden planks. Some had a blanket.

29. Most, if not all detainees the Special Rapporteur met in the remand institutions were clearly afraid of speaking to him about the treatment they had received in police stations and provisional detention wards. A considerable number of them said that they had been threatened and that they had been misinformed about their rights. Women in particular said that they had recovered their dignity only after having been transferred to a remand institution. All were said to have a lot to say, but, as one detainee recognized, none was brave enough to testify. Fear of being returned to the police was often expressed. The General Prosecutor recognized that the use of threats by the police may be a widespread problem inherited from the previous regime.

2. Individual cases

30. Regarding police ill-treatment, the Special Rapporteur received information on the following individual cases.

31. Elshad Goysseynov, a Ph.D. candidate in economics, is said to have been threatened and ill-treated on several occasions for having received confidential information on foreign intelligence as a result of his academic research. On the last occasion, on 5 April 2000, he was reportedly severely beaten by seven unknown assailants near his residence. He is said to have

gone to the Sabunçu district police station to report the incident. There, police officers are said to have incited his assailants, who had followed him, to continue the beatings. He was eventually sent with a police officer to hospital where he received treatment. A medical certificate he allegedly did not see was kept by the police officer. According to the information received, three days later he was called in to the Sabunçu district police station to identify his alleged assailants. At the station, he was allegedly assaulted by five of his assailants in front of investigators who are said not to have reacted. He reportedly sent a letter of complaint to the regional prosecutor's office, to no avail.

32. Jafarov Intigain is said to have been convicted of robbery under article 145 of the Criminal Code and given a 10-year sentence. He was reportedly arrested on 17 March 1996 at Bakihanov, a suburb of Baku, and taken to the Sabunçu district police station where he was held for one week. During his detention, the police are believed to have tried to blame him for other crimes. At night he was allegedly taken out of his cell and tortured to confess to crimes, including murder. His hand was allegedly placed between the door and the frame; he was hanged by the handcuffs; he was beaten with wood. At some point he is said to have lost consciousness for one and half or two hours. According to the information received, he was beaten daily on the front and on the back in the lung area, it is believed, to encourage tuberculosis. The Special Rapporteur did note early symptoms of TB, which were said to have been treated. Mr. Intigain never saw a lawyer from the time he was taken into custody. He did not ask for a lawyer, because he did not think it would help and he never expected he would be given one. After seven days he was reportedly transferred to Shuvalan SIzo where he was held for three months.

33. Leyla Tairbekov was reportedly arrested on 16 February 2000. She is believed to have been taken to the Belice prosecutor's office where she was told that she was under arrest on suspicion of counterfeiting. She was then taken to "Gorotdel", where she was held for 11 days, after which she was transferred to Baku SIzo. She was reportedly not offered a lawyer for the first week of her detention. It is believed that her detention is connected to the fact that her husband is a communist who had recently made some statements to the press in Moscow. While he was at the police station, she was taken every day to the prosecutor's office, where she was questioned. She was allegedly told that if she did not do what the police wanted, they were going to kill her two daughters. It is also alleged that she was threatened by an assistant prosecutor. Eventually, ceding to threats and pressure, she signed a confession. She apparently showed her lawyer signs of bruising on her arms, but prosecuting officials are said to have claimed that the marks dated from before her arrest. No medical examination is said to have been requested by her lawyer because he believed that the prosecutor's office would not agree to give the necessary instructions for the medical examination to take place.

34. Gurbanov Bakhtiyar was reportedly arrested half naked at his home on 23 February and taken to the Guba region police department where he was allegedly kept for 10 days. He refused the lawyer who was offered to him, because he believed that he was accused of a minor crime and could do better without a lawyer. The person who filed a complaint against him is said to have withdrawn the complaint after Mr. Bakhtiyar paid the sum of money he owed the complainant. Despite that, he was forced to sign confessions to other crimes he did not commit. He was allegedly subjected to beatings, in particular with a truncheon, and insults by some investigators. He was also promised by the investigators that he would be sent to the

prosecutor's office and then released if he signed blank papers. According to his testimony, he was transferred to Shulevan Slzo on 3 March. He was said to have been sent back to Guba region police station to attend his trial which lasted from 3 to 13 May. While he was reportedly not subjected to any further beatings or threats, he did sign other documents out of fear. He reported that he had complained about the torture at his trial. At the time of the interview (15 May), the Special Rapporteur noted what appeared to be a broken bone at the base of the little finger of his right hand, which was allegedly due to the beatings he had been subjected to. He is believed to have received medical treatment only after his transfer to Shuvelan Slzo. It is believed that this treatment was not recorded.

35. By letter dated 15 November 1999, the Special Rapporteur advised the Government that he had received information concerning Elchin Behudov (see E/CN.4/2000/9, para. 43) who had reportedly been arrested in Baku on 21 October 1995 on suspicion of concealing information regarding the murder of a fellow employee of the Presidential Special Department. At the Baku City Police Department ("Gorotdel"), he was allegedly severely beaten in order to extract a confession. By letter dated 18 February 2000, the Government responded that his family had been notified of his arrest and that he had been informed of his right to legal representation which he had declined in writing. It reported that although he did not admit his guilt in the course of the trial, his guilt was proven by statements he had made during preliminary investigation, the testimony of other suspects, as well as forensic and physical examinations. On 4 March 1996, he was given a suspended sentence of two years' imprisonment by the Supreme Court of the Azerbaijani Republic.

36. The Special Rapporteur met Elchin Behudov who gave further details about his case, including on the treatment to which he had been subjected at the Baku City Police Department. In particular, he denied the information according to which his family had been notified of his arrest and that he had been offered a lawyer. Mr. Behudov informed the Special Rapporteur that on the seventh day of his detention, his wife was simply told by friends to send food to the Baku City Police Department and he was only able to meet his lawyer on 7 January 1996. According to Mr. Behudov, while in detention, an investigator from the prosecutor's office had informed him that it was not possible to open a case against seven accused police officers despite the fact that he could see the marks of the beatings. Finally, it was reported that all the defendants in the case had been beaten and complained to the judge during the trial. The latter is said to have ignored their complaints which are believed not to have been recorded in the minutes of the trial.

37. The Special Rapporteur also interviewed the two following persons whose testimonies illustrate irregularities with respect to the legal procedure pertaining to arrest and detention.

38. Mamedova Suraija reportedly went on 12 May 2000 to the Nazimi region police station, where she had been asked to go in connection with a counterfeiting affair. There, she was told to sign a blank paper, which she did out of ignorance. She was then asked to go to police unit No. 22 where she was informed that she was under arrest. She was reportedly immediately taken to "Gorotdel". She believes that her family has not been informed. She was not offered a lawyer and she did not know who authorized her detention.

39. Sultan Salimov was reportedly arrested on 10 May 2000 on suspicion of illegal possession of firearms and taken to the Nizami region police station, from which he was transferred subsequently to police unit No. 24 and to the Sabai region police station No. 8. He is said to have been interrogated and to have seen a prosecutor. He was reportedly taken to "Gorotdel", but is said to have been taken back to the Sabai region police station every day for further questioning.

C. Information concerning remand centres

1. General information

40. An October 1999 presidential decree transferred the remand institutions from the jurisdiction of the Ministry of Internal Affairs to the Ministry of Justice. The Minister of Justice rightly pointed out that this transfer should reduce the risk of torture since suspects are, according to the Minister, rapidly taken out of the hands of their investigators. Nevertheless, the Deputy Minister of Justice pointed out that while the personnel of these detention centres are formally under his Ministry, they often continued to apply the rules of the previous one. Mentalities were said still to be changing, but the Deputy Minister indicated his commitment to meet this challenge, as well as to improve the conditions of detention.

41. On 12 May, the Special Rapporteur visited Bailov SIzo where 1,048 persons were detained at the time of his visit. The official capacity of this remand centre was said to be 1,250 persons. No distinction between first-time offenders and recidivists was made. Drug-related and serious offenders were said by the governor of Bailov SIzo to be separated from the others. Women were held in a separate wing, as were the 26 lifers detained at that time. The latter were expected to be transferred to Gobustan Prison as soon as material arrangements to accommodate them were finalized there. Despite the fact that no overcrowding problem was said to exist at that time, the Special Rapporteur visited a cell in which there were 8 beds for 10 persons. The person most recently transferred to the cell had arrived seven days before the visit of the Special Rapporteur while the person who had stayed there the longest had been in the cell for more than one year. The Deputy Minister of Justice acknowledged that it was an unjustifiable mistake on the part of the governor.

42. The quarantine cells, where all newcomers are reported to be held for an initial period, were empty and the governor first indicated that nobody had been brought to the centre on that day. The registry book indicated that no one had been brought in for the last three days. The Special Rapporteur noted that newcomers had been recorded in the register for every other day. A list of prisoners having arrived on that day and on the two previous days was eventually shown to the Special Rapporteur. After discussion with the prison authorities, it was explained to the Special Rapporteur that entries were not recorded in the registry book every day. The Deputy Minister of Justice recognized that this was negligent and that new arrivals should be registered on a regular basis. It was also indicated that new detainees could stay in the quarantine cells for up to one day, but that most of the time their processing, i.e. registration (in particular fingerprinting) and a medical check-up, could be done in a few hours. This explained why the Special Rapporteur did not see anybody in the quarantine cells.

43. During interviews with detainees, no complaint regarding their current situation was made. They were receiving food three times a day and were let out of the cells for exercise 45 minutes every day. All confirmed having passed a medical check-up upon arrival. With respect to access to their lawyers, they indicated that they were not subjected to any restrictions.

44. The Special Rapporteur expressed his concerns to the Bailov authorities regarding the fact that the lawyer of Vagif Mustafa oglu Hajiev (see below), whom he had met at the beginning of his tour of the centre, was prevented from seeing his client on that day. According to information received later that day, Vagif Mustafa oglu Hajiev had been informed that his lawyer was waiting for him, taken out of his cell and then taken back to his cell without seeing his lawyer, with no explanation. Questioned by the Special Rapporteur, the governor did not give any explanation.

45. A large number of persons had been detained in Bailov SIzo for several months and up to more than a year.

46. On 12 May, the Special Rapporteur visited the remand centres at the Ministry of National Security headquarters, at the invitation of the authorities. Only serious crimes against the State, such as terrorism, espionage and treason, fall within the jurisdiction of this Ministry. The head of the Investigation Department indicated that he only had a dozen investigators at his disposal. The Minister indicated that the rules regulating detention by his Ministry are the same as those regulating detention by the police. Similarly, the new Criminal Procedure Code was said to apply equally to detention ordered by officials of the Ministry of Internal Affairs or by officials of the Ministry of National Security.

47. The premises effectively serve as a police station, provisional detention ward and remand centre where persons can be held until conviction and sentencing. The Special Rapporteur therefore expressed his concern regarding the fact that a person remains in the hands of the investigators of the Ministry of National Security during the entire period of the investigation until the final sentence by a court and transfer to a prison. It must also be noted that the head of the cells unit confirmed that his personnel did not monitor interrogation sessions which are said to be held behind closed doors. The Minister indicated that the same concerns had already been expressed by several interlocutors, in particular from the Council of Europe. He pointed out that the institution had been inherited from the Soviet era, but it was foreseeable that the premises would not be used as a remand centre in the future.

48. The detention regime was exemplary. The head of the cells unit said that 43 persons were currently detained. There are two kinds of cells: one designed to hold two detainees in 15 square metres and another designed to hold four detainees in 36 square metres. The official capacity was said to be 107. All the cells were well furbished and clean. Some of the detainees were preparing food at the time of the visit. The Special Rapporteur noted that the punishment cell, which was said to be used very rarely, did not contain a light bulb. It was explained that, owing to financial constraints, the bulb was being used in another cell. The punishment book confirmed that the cell was used rarely: 27 persons were recorded to have been punished since 1994.

49. On 15 May, the Special Rapporteur visited Shuvelan SIzo. The official capacity is 1,050 and 857 persons were detained at the time of the visit. Nobody was held in the quarantine cells. It was explained that the medical check-up and other initial formalities lasted only for a couple of hours. Within a day, a person was taken to a normal cell. Nobody was currently held in the punishment cells which, according to the punishment book, had only been used three times since the beginning of the year. The Special Rapporteur nevertheless noted that they were rather rudimentary and gave out a bad odour. The punishment book also recorded that some 10 people had been reprimanded since the beginning of the year for having violated internal rules.

2. Individual case

50. Natig Efendyiev, the former head of the Ganja City Police Department who is said to have resigned from his position in protest against the current Government, reportedly left the country on 10 January 1998 because of threats he and his family had allegedly received. On 10 January 2000, he was reportedly arrested in Samsun, Turkey, by a special unit of the Turkish law enforcement. He was told that the Turkish military intelligence services wanted to speak with him. The same day, he is said to have been transferred to Ankara where he reportedly criticized the current Government of Azerbaijan. Hooded, he was allegedly taken secretly in a private plane to Baku where he was immediately transferred to the detention centre of the Ministry of National Security. During his first interrogation session, he was reportedly offered a lawyer, but was forced to refuse him. During the first 10 days of his detention, he is reported to have been interrogated every night by two investigators who did not give their names. At some point, he is alleged to have signed a document he was given by his interrogators. He also reportedly refused to make a statement on television. At the end of this initial period of interrogation, he was given access to his own private lawyer and was then reportedly interrogated by investigators from the Ministry of National Security. His family is said to have been informed of his detention 15 days after his arrest and his wife was allowed access around 20 April. He is reportedly charged with an attempted coup d'état and illegal possession of firearms.

D. Information concerning prisons

1. General information

51. Since 1993 prisons have been under the jurisdiction of the Ministry of Justice. According to the Minister of Justice, Azerbaijan was the first CIS country to have transferred the administration of the penitentiary system to the Ministry of Justice.

52. The Chairperson of the Supreme Court and former Minister of Justice told the Special Rapporteur that the penitentiary system had been opened to public scrutiny. The Deputy Minister of Justice and head of the department on the implementation of court decisions confirmed that for the last three years, the penitentiary system had been opened to public inspection, including by the media and NGOs. NGOs confirmed that the penitentiary system had been opened to them, but stressed that they were prevented from having confidential interviews with detainees, which weakened the whole exercise.

53. Important efforts had also been made to improve the conditions of detention, such as the removal of metal blinds. A complete renovation of the penitentiary system is said to be planned over the next 40 years. The Deputy Minister indicated the necessity of obtaining international assistance to carry out a programme aimed at bringing the Azerbaijani penitentiary system up to international standards. According to the Minister, one of the main problems that his office was currently facing was the large number of prisoners with tuberculosis; an estimated population of 2,000 persons with TB who are currently detained have to be secluded from the others in order to prevent the spread of the disease. A mixed-regime institution was recently built next to a hospital in order to group TB patients together. An International Committee of the Red Cross (ICRC)/World Health Organization (WHO) programme was said by the authorities to be currently under implementation.

54. A new Corrections Code had also been recently presented to the Parliament after having been submitted to experts of the Council of Europe for comments. A special committee was created within the Ministry of Justice in order to deal with prisoners' complaints. A guide for convicts explaining the rights and duties of prisoners has been published and is distributed to all convicts.

55. On 10 May, the Special Rapporteur visited Gobustan prison which is located 60 km outside Baku. There was no problem of overcrowding since the actual population was 484 while the official capacity is 620. In particular, the Special Rapporteur visited the wings housing lifers. The conditions in which they were detained seemed to meet international standards and they did not have any particular complaints to express. The lifers interviewed by the Special Rapporteur were not all aware that their death sentences had been commuted to a life sentence. Furthermore, even if they knew, none had been informed that, as indicated by the Deputy Minister of Justice, according to the new legislation the maximum period of time to be spent in detention is 20 years. The Deputy Minister reassured the Special Rapporteur that a note would be circulated in order to inform all lifers of the new rules. Regarding the conditions of detention of the lifers, the Deputy Minister of Justice informed the Special Rapporteur of his intention to add to all cells holding lifers a private promenade area, as well as a proper separate bathroom. But no recreational or educational activities were envisaged since it was said not to be provided for in the Corrections Code.

56. In one of the punishment cells of Gobustan prison, the Special Rapporteur met two prisoners who were said to have been recently transferred to Gobustan and who consequently were held in quarantine. According to the prison rules, detainees are kept in quarantine upon arrival until the results of the initial medical check-up are obtained. They had been held in this very basic and dirty cell for 12 and 5 days, respectively. Both were showing what appeared to the Special Rapporteur to be signs of TB and had obviously not received any hygienic attention. They were allegedly also not receiving any specific medical treatment although the governor of the prison said that they had been seen by the prison doctor. Regarding the first detainee, no record of any medical check-up upon arrival could be found in either the registry book or his personal file. Regarding the second detainee, a medical certificate indicating chronic bronchitis and asthma, and presumably TB, as well as instructions to send him for X-rays and to a medical unit, was found in his personal file. Nothing had nevertheless been done. The Deputy Minister assured the Special Rapporteur that the two prisoners would receive immediate and appropriate medical attention.

57. According to non-governmental sources, the problem of TB in the penitentiary system is partly due to the slow and incorrect diagnoses of detainees demonstrating the symptoms. According to the governor of Gobustan prison, and as confirmed by the medical records of the detainees concerned, nine detainees had died since the beginning of the year. Seven, of whom six were lifers, were said to have died from TB. It should be noted that the total population of lifers in Gobustan prison was less than 100. This rather high rate of death from TB amongst lifers was explained by the Deputy Minister by the fact that TB is very widespread in pre-trial detention centres where sick detainees were not segregated from others. The governor also explained that TB had become more resistant to treatment and that a virulent form of TB could kill in a few days without allowing the prison authorities time to transfer the infected prisoners to an appropriate medical unit. According to medical doctors consulted by the Special Rapporteur after the mission, a proper programme of detection and treatment could well reduce deaths from TB to zero. Such results were said to have been reached in another country of the region. It was also explained to the Special Rapporteur that there is no such virulent form of TB which would prevent prison authorities from transferring sick detainees to an appropriate medical unit long before their lives would be in danger. According to information received, the Ministry of Health was refusing to apply the relevant WHO recommendations. The Deputy Minister affirmed that all deaths in prison were examined by forensic medical specialists and an investigation undertaken by the prosecutor's office.

58. The Special Rapporteur noted that the punishment book invariably indicated the reason for the punishment as "breaking the rule", without any details given. The length of punishment varied from 5 to 15 days. It was explained to the Special Rapporteur that three days' punishment period was the most common, but that the governor of the prison had the right to extend that to 15 days depending on the rule which had been violated by the prisoner. The Special Rapporteur notes with concern the lack of proper recording with respect to punishment decisions which therefore could appear as arbitrary.

59. The Special Rapporteur paid a very quick visit to the labour reformatory colony No. 1 where he was impressed by the efforts made to accommodate short and long-term visits. Unfortunately, he did not have sufficient time to undertake a proper visit.

60. Finally, the Special Rapporteur received information from non-governmental sources according to which the number of torture allegations from the administrative detention centre known as "Black City", where those detained under an administrative order are held, had dropped considerably since 1996. A "secret" investigation by the General Prosecutor's Office which reportedly led to the dismissal of all senior officials working in that institution is believed to be the reason for the change. While the Special Rapporteur welcomes this information and the initiative taken by the General Prosecutor's Office, he regrets that there seems to have been no publicity on this case. No information on subsequent legal actions against alleged perpetrators of torture is available. The General Prosecutor indicated that the system of administrative detention was in the process of being abolished.

2. Individual cases

61. Prior to the mission, the Special Rapporteur had received information according to which 11 prisoners and two guards had died during disorders at Gobustan prison in January 1999

following an escape attempt by two prisoners on 7 January 1999. These two prisoners were said to have opened a large number of cells, encouraging others to join them. Twenty-eight guards with their weapons and ammunition were then taken hostage by the prisoners while others were seriously injured and at least one killed. On 8 January, the prisoners were reportedly provided with a minibus. Later that day, it is alleged that armed units from the Ministries of Justice and Internal Affairs opened fire on the bus as it was leaving the prison. As a result, nine prisoners and a guard are said to have died, and over 20 people were said to have been wounded. An investigation into the incident was reportedly ordered by the Procurator-General's office.

62. The Special Rapporteur received consistent information according to which detainees suspected of involvement in this escape attempt were subjected to torture during above-mentioned investigation. The names of several of them are known to the Special Rapporteur. It is believed that alleged political opponents were mainly targeted. They were allegedly severely beaten with wooden, rubber and metal truncheons by masked investigators in civilian clothes in order to make them sign confessions either in Gobustan prison, or in an unknown place of detention where they had been secretly transferred for interrogation. Those who were kept in Gobustan are reported to have been taken to the punishment cell where they remained for 45 days. This cell, now decommissioned, was alleged to be like a tunnel measuring three by three metres where there was only refracted light. Twenty detainees kept naked were reportedly detained there at the same time. According to the information received, they were periodically taken to the Deputy Director's office where they were severely beaten. Several of them are believed to have thus been forced to sign confessions.

63. They were also said to have been denied access to lawyers. A State-appointed lawyer is believed to have first met some of them in November 1999. They did not receive any medical treatment: some are reported to have received medical treatment from the Gobustan prison doctor after their return from court. It is believed that medical examinations have not been recorded. Several are said to have complained about the treatment they were allegedly subjected to and to have asked for medical expertise during their trial which started on 25 January 2000. Judges of the Supreme Court are said to have ignored their complaints and requests and to have stated at the opening of the trial that, in any case, they were going to be punished. They were reportedly charged, inter alia, with crime against the State and armed attack. On 29 March 2000, they were reportedly sentenced to several additional years of imprisonment.

E. Excessive use of force by the police

64. Prior to and during his mission, the Special Rapporteur received a number of reports according to which law enforcement officials have on several occasions used excessive force, especially in the handling of demonstrations organized by political opposition parties, in particular in the context of elections.

65. The Special Rapporteur received information according to which law enforcement officials had used excessive force to disperse a rally organized by several political opposition parties in Baku on 29 April 2000. According to official interlocutors, the authorities had told the

demonstrators that the rally could not take place in the centre of Baku as intended by the organizers and proposed another location, outside central Baku. The demonstrators nevertheless gathered in the centre of the city. It was reported by NGOs and the media that several demonstrators were severely beaten by the police.

66. In particular, the Special Rapporteur received information regarding Vagif Mustafa oglu Hajiev, the chairman of *Arar*, one of the political parties that organized the demonstration. After the demonstration, at around 5 p.m., he is said to have gathered with some friends at the Republican Palace where he met the head of the Department for Public Security of the Baku City Police Department and senior security officials. He was reportedly asked to instruct the demonstrators to disperse calmly. Immediately after the order was given, a police officer is said to have attacked a journalist who reportedly lost consciousness. It is reported that the deputy chief of Nazimi police region then instructed police officers to beat Vagif Mustafa oglu Hajiev, who was allegedly attacked by 10 officers with rubber truncheons and beaten on the back and on the head, while offering no resistance. He is said to have lost consciousness and to have been taken to a car. He reportedly recovered consciousness at the Nazimi region police station No. 22 where he vomited. Despite repeated requests, his own doctor was denied access to him. Finally, a doctor said to be close to the police came and gave him injections, but refused to make an official record of medical treatment. At around 11 p.m., an independent doctor is said to have examined him and to have asked police officers to transfer him to hospital. The police refused. The following morning, he was reportedly taken to Nazimi court where a judge is said to have asked for a medical report because of his obviously serious condition. The judge is said to have asked the deputy prosecutor to produce a medical report. Vagif Mustafa oglu Hajiev is reported to have been sent back to the Nazimi police station No. 22 where he remained for the next three hours. According to the information received, he was then taken back to the court where the judge read out a medical certificate indicating that he had suffered light bodily injuries. He reportedly tried to challenge this but was prevented from doing so by the judge. The judge is said to have sentenced him to 10 days of administrative arrest. He is said to have spent the following two days lying on a sofa without being able to stand up or to bear the light and still vomiting. During that time he was reportedly able to obtain medical treatment by his own doctor. He was then reportedly transferred to "Black City", the centre where persons sentenced to administrative detention are said to be held. On 5 May, he was informed that a criminal case had been opened against him for having resisted and lightly injured police officers, and was given access to his lawyer for the first time since his arrest. On that day, he was reportedly transferred to Bailov SIzo where he was said to have been examined by a doctor on several occasions and to have received medical treatment. From his arrival in Bailov to the date of his meeting with the Special Rapporteur (12 May), he had reportedly not been interrogated. It is believed that the reason for his arrest may be the fact that he had publicly criticized the President.

67. Similarly, the Special Rapporteur received information on Gurban Gurbanov who was allegedly severely beaten with rubber truncheons at the time of his arrest during the 29 April demonstration. He was reportedly arrested by police officers in civilian clothes and taken to the Nizami police station No. 22. On the following day, he was taken to the Nizami court where he

was immediately sentenced to one day of administrative detention. According to Mr. Gurbanov, someone later added another number "1", making his sentence 11 days' detention. He was also later charged with resisting the police. One police officer, a friend of Mr. Gurbanov, is said to have confessed to him that he had been threatened with being fired if he did not complain against him. Mr. Gurbanov reportedly refused a State-appointed lawyer and was asked to sign a confession. On 4 May, he was reportedly transferred to Bailov where he met the Special Rapporteur on 12 May. He had been on hunger strike for the previous two days in protest of the fact that his case had not been investigated.

68. The head of the Law Enforcement Bodies Department of the Executive Administration of the President informed the Special Rapporteur that 42 police officers had obtained medical certificates indicating that they had suffered injuries.

69. Harassment of journalists covering demonstrations was reportedly widespread. It was, however, recognized by journalists themselves that arrests of journalists had recently become less frequent. During the 29 April demonstration at least 17 journalists were allegedly beaten by the police. In particular, the Special Rapporteur received information on Mustafa Hajiev, a famous journalist whose two brothers are leaders of political opposition parties (see para. 66 above). He was allegedly severely beaten with batons, especially on the arms and the head, while taking pictures of demonstrators being beaten. He did not try to get a medical certificate since he believed that the police would not issue the necessary instructions. It was also reported that following this demonstration journalists were prevented from meeting persons who had been arrested.

II. PROTECTION OF DETAINEES AGAINST TORTURE

A. Prohibition of torture

70. Article 46 of the Constitution which entered into force on 27 November 1995 provides that "[n]o one shall be tortured or humiliated. No one shall be subjected to degrading treatment or punishment."

71. The Criminal Code in force at the time of the mission of the Special Rapporteur did not include any specific provision regarding torture. However three provisions were said by official interlocutors and lawyers to cover the crime of torture: Articles 167 on abuse of authority, 168 on actions ultra vires and 177 on coercion to testify.[3] A number of other provisions of the Criminal Code, such as articles 102, 105 and 106 concerning various degrees of deliberate bodily harm and article 108 on beatings and systematic violence, were said to also encompass the notion of torture. Despite his requests, the Special Rapporteur was not provided with any case law which would have allowed him to understand how these provisions had been used to ensure that acts falling within his mandate were criminally prosecuted. He notes that, according to non-governmental sources, very few legal proceedings had reportedly been initiated under these provisions in the past. Only the most serious cases, such as deaths from torture which had provoked public outcry, were said to have been prosecuted.

72. Article 133, entitled "Torture", of the new Criminal Code adopted on 30 December 1999 which entered into force on 1 June 2000 complements the constitutional provision. This article reads as follows:

"Article 133 - Torture

"133.1. The intentional infliction of severe physical pain or mental suffering by means of systematic blows or other violent acts which have not caused consequences provided for in article 126.2[4] and article 127.2[5] of the present Code shall be punished with imprisonment for a term not exceeding 3 years.

"(...)[6]

"133.3. The actions specified in articles 133.1. and 133.2., committed by officials by means of abuse of powers and for the purposes of obtaining or forcing to obtain information about actions committed by the victim or other persons, of punishing him or other persons for an act they have committed or are suspected of having committed, as well as intimidating the victim or other persons or coercing them to commit any action shall be punished with imprisonment for a term of not less than 5 years and not exceeding 10 years."

73. Although torture is defined in terms similar to those of article 1 of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the definition of the Azerbaijani Criminal Code does not reflect entirely the internationally agreed definition of torture. Firstly, it restricts acts of torture to "systematic blows or other violent acts", while the Convention definition refers to "any act". It thus does not cover acts causing "severe pain or suffering, whether physical or mental," inflicted by means other than those indicated. Secondly, amongst the different elements of *purpose* indicated in the Convention definition, the general notion of "or for any reason based on discrimination of any kind" is lacking. Thirdly, on the one hand, in addition to the well-established concept of "torture" in international law, the Azerbaijani notion of torture also encompasses private acts of cruelty (see art. 133, para. 1). On the other hand, it must be noted that the notion of "with the consent or acquiescence of a public official" contained in the Convention definition is absent from the Azerbaijani definition. Under international law, this element of the definition makes the State responsible for acts committed by private individuals which it did not prevent from occurring or, if need be, for which it did not provide appropriate remedies. Hence, criminal liability of public officials having consented or acquiesced to such acts by private individuals is not provided for by the Azerbaijani Criminal Code. Such behaviour by a public official constitutes in itself a human rights violation and a crime under international law.

74. In view of the fact that the core mandate of the Special Rapporteur is the treatment to which persons are subjected at the time of first arrest when they may be at risk of torture in order to extract confessions, reference must also be made to article 293 of the Criminal Code which complements article 133. This article reads as follows:

"Article 293 - Coercion to testify

"293.1. The coercion of a suspect, an accused person, a victim of crime or a witness to testify and of an expert to give an expert opinion by an investigator or inquirer with the use of threats, blackmail and other illegal measures shall be punished with up to 3 years' imprisonment.

"293.2. The same acts committed with the use of violence, humiliation or torture of a victim shall be punished with imprisonment for a term of not less than 3 years and not exceeding 7 years."

75. Therefore, the crime of torture is now well established under Azerbaijani criminal law. Owing to the recent adoption of these provisions, no case law is yet available to understand how these provisions will be interpreted by the judiciary. The Special Rapporteur also notes that, according to information received from non-governmental sources, including lawyers, the Criminal Code had not been published at the time of his visit although it was meant to enter into force on 1 June 2000.

76. According to information provided by the Government, the issue of extradition of a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture has been addressed in the draft Law on Extradition and meets international standards. No particular concerns had been expressed to the Special Rapporteur regarding this issue prior to or during the mission.

77. Finally, the Special Rapporteur notes with satisfaction that Azerbaijan became a party to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty in January 1999. It nevertheless entered a reservation under which the death penalty could be applied for grave crimes committed in wartime or under threat of war, and the Criminal Code was amended to this effect in October. The Special Rapporteur considers that measures towards the abolition of the death penalty constitute progress in the elimination of cruel, inhuman or degrading punishment.

B. Arrest and detention

78. It must be noted that interpretations of the provisions of the Criminal Code and the Criminal Procedure Code in force at the time of the Special Rapporteur's visit regarding arrest and detention varied from one institution to another. As the Special Rapporteur was not provided with the English version of the relevant provisions, the various interpretations he was given by officials, in particular during visits to detention places, will be recorded below. It must be noted that this lack of knowledge of the law certainly leads to situations of excessive and arbitrary detention periods which are said to be conducive to torture and other forms of ill-treatment. Emphasis is put in this section on the provisions of the new Criminal and Criminal Procedure Codes which were said to enter into force on 1 June 2000 and 1 September 2000, respectively.

79. According to officers of the Department to Combat Organized Crime, article 430 of the Criminal Procedure Code in force at that time provided that a person can be kept in custody by

an investigator for up to 30 days since, as they explained, the arrest warrant issued by a prosecutor is valid for two months. However, it was clearly stated that at the end of the first month, the person had to be transferred to a pre-trial detention centre under the jurisdiction of the Ministry of Justice, even where the person was not yet formally charged. According to non-governmental organizations, "Article 146 [of the Criminal Procedure Code] states that preliminary investigation must be completed in two months, but then goes on to detail that extensions may be granted by higher-level procuracy officials for several months, and for an indefinite period in 'exceptional cases' upon the authorization of the General Prosecutor."[7] On the other hand, according to the General Prosecutor, the Criminal Procedure Code provides that, only with respect to the most serious crimes, a prosecutor can prolong the detention for up to 10 days. But he added that in the case of the nine most serious crimes, this detention can last for up to 18 months.

80. According to the new Criminal Procedure Code, a person can be held for up to 24 hours upon the decision of a prosecutor or an investigator from the Ministry of Internal Affairs (police) or from the Ministry of National Security. Paragraph 4 of article 148 of the Criminal Procedure Code provides that "[i]f the decision on starting the criminal process is not taken within 24 hours after the person's arrest, the arrested person should be immediately freed." It further provides that "[e]ven if such a decision is taken the arrest cannot last more than 48 hours." All official interlocutors indicated that the second 24-hour period had to be ordered by a prosecutor, in any case. The General Prosecutor indicated to the Special Rapporteur that an investigator can only take someone into custody if a criminal file had been opened with a prosecutor. This meant that, contrary to the previous system, a prosecutor must be informed immediately of any arrest and can therefore monitor the entire duration of the deprivation of liberty. According to the General Prosecutor, this system also ensured that a lawyer was informed on time. However, the Special Rapporteur notes that subparagraph 3, paragraph 2, of article 153 only provides that every arrest must be recorded with the "head of investigation organ or the prosecutor managing the initial process (this information is given in writing within 12 hours of arrest)."

81. With respect to the monitoring of the initial period of detention, on 17 December 1999, the Prosecutor General issued the "Order on Additional Measures relating to Observations under the United Nations Convention against Torture" which stresses the necessity of increasing the efficiency of prosecutors' supervision and monitoring of investigation and pre-trial detention places in order to prevent cases of torture and to prosecute eventual perpetrators.[8]

82. Paragraph 4 of article 148 of the Criminal Procedure Code provides that during this initial 48-hour period of detention, "the arrested person should be announced accused and brought to court within 48 hours of his arrest, the court should adjudge the case without delay and should decide either to take resolute arrest measures or to free the person." Paragraph 3 of article 150 similarly provides that "[t]he arrest of the suspicious person cannot last more than 48 hours in order to announce accusation (...) the person should be brought to the court within 48 hours of his/her arrest, the court should adjudge the case without delay and should decide either to take resolute arrest measures or to free the person." Then, the person must be transferred to a remand centre (under the jurisdiction of the Ministry of Justice) within three days. Thus, paragraph 3 of article 157 of the Criminal Procedure Code provides that "[t]he person arrested by the decision of court may not be kept at the temporary detention place more than three days and should be transferred promptly to a [remand centre] ...".

83. The head of the Law Enforcement Bodies Department of the Executive Administration of the President explained that if evidence is requested by a defence lawyer, the judge can decide to extend the initial 48-hour period to 72 hours. The arrested person is then transferred back to the police station cells. Therefore, the maximum period of time a person may be held in a police station is 72 hours. The head of the Law Enforcement Bodies Department also said sometimes, especially for remote police stations, time is needed to organize transportation to one of the few remand detention centres which currently exist in the country. The Special Rapporteur expressed his fears regarding this system. In particular, he noted the dilemma in which a lawyer might find him/herself: seeking new evidence to defend a client might put him at risk of further violence at the hands of the police. The head of the Law Enforcement Bodies Department further explained that one of the main problems was the lack of a sufficient number of remand centres which would allow the prisoner to be immediately transferred out of the hands of the police. He expressed his hope that new remand centres would be built in the near future in all the regions of the country. The Special Rapporteur suggested that where a court decision is taken to give an additional 24-hour period to a lawyer to find new evidence, the accused be kept in court cells, if they were appropriate.

84. The new Criminal Procedure Code also provides for the right to habeas corpus. Paragraph 2 of article 447 provides that an appeal against a decision to arrest is reviewed by the court within 24 hours. This right did not exist in the previous Code.

85. With respect to access to a lawyer, the Prosecutor General indicated that under the current system only juvenile offenders and serious offenders were provided with free State-appointed lawyers where needed. The new Criminal Procedure Code provides that all indigent suspects will have access to a State-appointed lawyer. Paragraph IV, subparagraph 1, of Article 19, "Security of the right to receive legal aid and the right to defence", of the new Criminal Procedure Code provides that "[t]he organ executing the criminal process should secure the following rights of the suspected person or the defendant: to receive legal assistance from the moment of apprehension or arrest, or, for suspected persons, before the first interrogation, and for defendants at the moment of arraignment." Furthermore, paragraph 2, subparagraph 7, of article 153 provides that the personnel of the authority implementing the criminal process and responsible for temporary detention places is required, "[i]f the arrested person cannot afford to hire a lawyer, to help him/her, at the expense of the Government, to meet the duty lawyer working at the legal entity in the area of the temporary detention place." While some officials said that a lawyer should be provided immediately to any person under arrest, or at least during the first interrogation, the head of the Law Enforcement Bodies Department affirmed that a lawyer must be provided after the initial 48 hours. This means that the lawyer must be present only when the suspect is brought before a magistrate.

86. The arrested person must "meet his/her lawyer or other legal representative separately but under supervision and to have the necessary confidential conversation" (art. 153, para. 2, subpara. 5). The General Prosecutor however noted with concern that the number of lawyers in the country was insufficient for the time being. But he also welcomed a recent agreement between the Ministry of Justice and the Association of Lawyers by which the Ministry will pay the fees of the State-appointed lawyers.

87. According to non-governmental sources, lawyers, as well as members of the family and private doctors, are very often denied access to detainees by investigators during the preliminary investigation period of detention. Most detainees met by the Special Rapporteur in the various places of detention he visited said that, even in the few instances they had been offered a lawyer, they did not believe that a lawyer could be of any help and therefore rejected the offer. It must also be noted that a significant number of detainees did not understand the meaning of "legal defence". Furthermore, the Special Rapporteur received information and direct testimonies according to which detainees had been forced to sign a document stating their decision to renounce their right to be assisted by a lawyer. The Chairperson of the Supreme Court indicated that she had never come across such a case. The General Prosecutor indicated that the document by which a person waives his right to a lawyer must be co-signed by the lawyer him/herself; this guarantees that the lawyers explain their role to suspects. According to the information he received during the mission from detainees and lawyers, the Special Rapporteur doubts that this happens in reality. Finally, the General Prosecutor and the Chairperson of the Supreme Court indicated that according to the new Criminal Procedure Code persons apprehended will not have the right to waive their right to a lawyer and will not be able to refuse the presence of a lawyer during interrogation sessions. Nevertheless, according to the copy of the Criminal Procedure Code provided to the Special Rapporteur, "[i]f the arrested person refuses to have a lawyer, it is necessary to get from him a written declaration to that effect (if the person refuses to write the declaration the lawyer or the representative of the temporary detention place is required to prepare an adequate protocol attesting this fact)" (art. 153, para. 2, subpara. 8). According to the head of the Law Enforcement Bodies Department, the lawyer must in any case countersign this document and therefore be present when the suspect is asked to make this declaration in writing. But it must be noted that, according to the interpretation given above, a suspect is still at risk of torture and other forms of ill-treatment to be forced to renounce his/her right to a lawyer during the first 48 hours during which a lawyer is not necessarily present.

88. Articles 19 and 153 provide other basic rights of arrested persons. Everyone who is arrested must be immediately informed of his/her rights (art. 19, para. 4, subpara. 2 and art. 153, para. 2, subpara. 1) and of the reasons for the arrest and of any charge against him/her (ibid.). The arrested person must also be informed of his/her right not to incriminate him/herself or his/her relatives. The family or relatives of any person under arrest are to be informed promptly about the arrest by the personnel of the temporary detention place (art. 153, para. 2, subpara. 4). The same provision also stipulates that the head of the place of temporary detention must take the initiative to inform the family or the relatives of elderly persons, teenagers and psychologically disabled persons in case of arrest. Previously, detaining authorities had up to three days to inform the family of someone detained, which was said to lead to a potential period of unacknowledged incommunicado detention (see article 93 of the previous Criminal Procedure Code). Then, investigators were said to have discretion whether or not to grant access to family members.[9] Finally, paragraph 2, subparagraph 10, of article 153 provides that the personnel of temporary detention places should "[n]ot behave in a way as to humiliate the personality or integrity of the arrested person, and to pay special attention to women, elderly persons, teenagers and disabled persons."

89. The General Prosecutor stressed that detention should only be resorted to for the most serious crimes and that release on bail should be the rule and detention the exception. He also

pointed out that the number of "particularly serious and serious crimes" had been reduced to some 12 crimes compared to the 50 serious crimes in the previous Criminal Code. The head of the Law Enforcement Bodies Department said that in the case of crimes which do not pose a threat to public order and which are punished by a sentence of up to two years of deprivation of liberty, the judge cannot order the arrest of a suspect.

90. With respect to the maximum time spent in detention pending trial, the head of the Law Enforcement Bodies Department indicated that for less serious crimes (which are punished by a maximum sentence of up to 5 years of deprivation of liberty), it is up to 5 months; for serious crimes (which have a maximum sentence of up to 10 years of deprivation of liberty), it is up to 7 months; and, for particularly serious crimes, it is up to 9 months. This is clearly stated in article 158 of the Criminal Procedure Code. It must be noted that the time spent in custody before the trial is deducted from the final sentence (art. 158, para. 6). A person suspected of having committed a particularly serious crime cannot be released on bail.

91. During his visit to the various provisional detention wards, the Special Rapporteur noted that some detainees had been re-transferred from remand institutions to places under the supervision of the police, either police stations or temporary detention facilities, for further investigation and interrogation. It was reported that these persons could stay for a few days in the hands of the police and may therefore be at risk of further ill-treatment. It was confirmed by all police officials that investigators had the right to ask the prosecutor to send the person back to them for further investigation. The General Prosecutor explained to the Special Rapporteur that as such transfer must be authorized by a prosecutor, the latter is in a position to monitor the situation. He also indicated that the person had to be taken back to the temporary detention facility on the same day. He nevertheless recognized that the police had a tendency to exercise this right too frequently.

92. Finally, the Special Rapporteur expressed his concerns to several of his official interlocutors regarding the radical changes in the legislation which were supposed to be implemented a very short time after their adoption. The Chairperson of the Supreme Court reassured the Special Rapporteur that training had been organized to prepare magistrates to apply the new Codes. Supreme Court Judges were also said to have closely followed the discussion in Parliament regarding the revision of the Criminal Code and the Criminal Procedure Code. A Legal Training Centre under the authority of the Ministry of Justice is also said to have been established.

C. Complaints procedures

93. According to information received by note verbale dated 16 October 2000 from the Permanent Mission of Azerbaijan to the United Nations Office at Geneva reproducing a document from the commission on legal reforms under the President of the Republic of Azerbaijan, "the respective provisions of the Criminal Procedure Code guarantee the right to appeal the decisions and actions of officials commencing criminal prosecutions, in particular those connected with arrest, detention, torture and other cruel treatment". As stated above, no case law on prosecution for acts falling within his mandate have been presented to the Special Rapporteur.

94. NGOs indicated that victims were very often afraid of making their complaints public before their trials took place since they feared repercussions. As noted earlier, the Special Rapporteur witnessed on several occasions the reluctance or refusal of detainees to make their allegations public, even if they had already been convicted, for fear of reprisals. Many alleged victims, as well as lawyers and NGOs, also expressed their lack of confidence that those officially charged with investigating complaints would act promptly and impartially if allegations of torture were made. Furthermore, they believed that no effective sanction would be taken against those found responsible in any case.

95. With respect to complaints procedures, the Minister of Internal Affairs said that between 1997 and 1999, 361 police officers had been seriously punished for (in numerical order) ill-treatment, illegal detention, unsubstantiated opening of a criminal procedure and illegal search of premises. Most were said to have been demoted, 47 were dismissed and 31 were charged under criminal law. According to the Minister, the disciplinary measures taken by his services were considered by the alleged victims as sufficient, since he pointed out that in 1999 only 25 complaints had been forwarded by international NGOs regarding insufficient disciplinary measure. He noted that cases presented by Amnesty International had been the subject of repeated investigation and that 16 additional disciplinary measures had been imposed as a result. In 1999, 30 police officers were subjected to disciplinary measures, while 6 were dismissed and 2 were criminally prosecuted.[10]

96. The Minister of Internal Affairs informed the Special Rapporteur that a department for internal investigation had recently been created within his Ministry. This department, which is composed of 30 officers, must immediately investigate police personnel reported by any individuals, mass media or NGOs to have infringed the rights of persons in their custody.[11] On 4 March 2000, he had issued the "Order on Additional Measures to Ensure Legality among the Personnel" to that effect. If sufficient evidence is obtained to open a criminal case, the file must be forwarded to the prosecutor's office for consideration. Otherwise, disciplinary/administrative sanctions such as demotion and ordinary reprimands should be imposed. He also pointed to the recent creation within his Ministry of a personnel department in charge of training and other educational activities. A number of officers were thus dispatched to the various district police headquarters to train police officers, especially in the field of respect for human rights. The Police Academy was also to have incorporated such discipline in its curriculum.

97. The head of the Department to Combat Organized Crime informed the Special Rapporteur that in 1999 three of his officers had received a reprimand or were reassigned to a lower position for having detained a suspect for a period of time exceeding the legal provision and one for having undertaken an unlawful search. No case of ill-treatment had been reported in 1999 and the first quarter of 2000.

98. The Chairperson of the Supreme Court informed the Special Rapporteur that the Plenary of the Supreme Court had recently addressed issues relevant to his mandate in a resolution which had been transmitted to all courts. In particular, the court requested all judges to verify the legality and the conditions of the detention of any person brought before them, even if no

specific complaint had been expressed. This resolution also reiterated the rule that testimonies obtained under duress shall not be admitted as evidence in court. The Chairperson of the Supreme Court nevertheless noted that, in her view, most torture allegations in court were made by defendants to escape responsibility for confessions they had previously made freely. Judges should always rely on other elements to determine whether the person made a confession under duress.

99. On the other hand, the Minister of Justice stated that a complaint of torture must never be taken prima facie as a defence, but should always be the subject of a careful investigation. The judiciary also has to play a proactive role in that respect in verifying the information, since he recognized that victims might be afraid to complain, even in front of a magistrate. It was also reported that magistrates have been asked, when evaluating evidence, to pay particular attention to the way evidence was obtained.[12] In particular, magistrates should always inquire about whether defendants have had access to legal assistance. The necessity of having an independent judiciary was also referred to. In particular, the Minister mentioned the recent process of selection of new judges, including judges of the Supreme Court, through an examination. He also suggested that investigators should be instructed to ask for regular medical expertise as soon as any doubts arise regarding the health conditions of suspects or detainees.

100. According to the Minister, serious measures had been taken against law enforcement officials found guilty of acts of torture: they had been administratively sanctioned and, in some cases, criminally prosecuted. Similarly, the General Prosecutor assured the Special Rapporteur that all cases of torture, illegal detention and denial of access to a lawyer are always investigated by his Office. A special service has been created within the General Prosecutor's Office to deal with such complaints. Furthermore, the head of the Law Enforcement Bodies Department and the Minister of Justice indicated that in the future amnesty laws will not cover cases of torture. On 10 March 2000, the special meeting of the Pardon Commission of the Office of the President is said to have discussed the recommendations of CAT and to have decided that amnesties or pardons will not apply to persons convicted of torture and inhumane treatment.[13] It is also reported that the five amnesty acts adopted during the period 1996-1999 excluded the possibility of amnesty for persons charged with or convicted of crimes mentioned in paragraph 2 of article 168 ("actions ultra vires") of the previous Criminal Code.[14]

101. The Special Rapporteur welcomes the information according to which the Ministry of Foreign Affairs is currently discussing the possibility of making the declarations under articles 21 and 22 of the Convention against Torture.

102. According to the new Criminal Procedure Code, forensic reports may be obtained from forensic officials who are under the jurisdiction of the Ministry of Health or from private doctors. At the time of the visit of the Special Rapporteur, forensic reports were only to be obtained through instructions given by the police. It was also reported that detainees in pre-trial detention did not have the right to be attended by their own doctors and detainees and their lawyers were said not to have the right to arrange forensic medical examination or other expert analyses.[15] No information on the new provisions regarding these issues has been made available by the authorities concerned to the Special Rapporteur, despite his request.

103. Magistrates are also said to have been asked by the Plenary of the Supreme Court to provide by all appropriate means explanations to the persons who have suffered torture and other unlawful acts regarding their right to claim compensation for moral and physical suffering and to create the necessary conditions for them actually to benefit from this right.[16]

104. Finally, the Minister of Justice recognized the need to have an independent mechanism monitoring places of detention, such as the ICRC. In that respect, the Special Rapporteur welcomes the recent agreement between the Government and the ICRC by which all places of detention will be visited by the ICRC.

III. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

105. The Special Rapporteur acknowledges with appreciation the full facilities granted him by the authorities. The mission's terms of reference were scrupulously respected. In particular, no obstacles were raised to his visiting (or revisiting) places of detention on an unannounced basis, nor to his speaking to persons held in such places in the sole presence of members of his team.

106. Azerbaijan, formerly a republic of the Soviet Union, has only been independent since August 1991. Its population of some 7 million is more or less evenly spread in terms of urban and rural residence. The cities are more prosperous than the countryside. The country has important natural resources, notably petroleum, together with extraction and refining facilities, as well as developed agriculture permitting or, at least, promising self-sufficiency.

107. Historically and culturally it conceives of itself as a bridge between Europe and Asia. Politically, it aspires to be part of the European geostrategic polity: it is a member of the Organization for Security and Cooperation in Europe and a candidate for membership of the Council of Europe.

108. While formally now a multi-party democracy, many Azerbaijanis question whether the resounding majorities achieved in presidential and parliamentary elections are an accurate reflection of the real voting pattern. On the other hand, the present political leadership seems to have provided a certain stability after real threats to the coherence of the State in the early 1990s, although the Government has been confronted by armed challenges in the mid-1990s. Reforms under way to the elections law are pointed to as a possible solution to the question of the legitimacy of the political authorities.

109. There is also a widespread belief both within and outside the country that corruption[17] is prevalent and that this extends to the administration of justice. This was indicated as one of the reasons behind a radical reform of the judiciary being carried out under the auspices of the World Bank.

110. As far as specific issues relating to the treatment of prisoners are concerned, notable improvements were identified. The achievement of the abolition of the death penalty in February 1998 was consistently cited with justifiable pride by official interlocutors with whom the Special Rapporteur spoke. The moving of correctional facilities and remand centres

("investigation isolators") from the jurisdiction of the Ministry of Internal Affairs to that of the Ministry of Justice was also cited as an important contribution to the improvement of conditions of detention. Certainly a combination of a substantial reduction in the prison population, notably in the wake of successive presidential amnesties, and considerable improvements in material conditions and regime effected (with others planned) by the Ministry of Justice have led to a drastic decrease in complaints about prison conditions. The Deputy Minister responsible for the system took genuine pleasure in showing the Special Rapporteur the long-term meeting facilities for private family contacts in centre No. 1.

111. There is evidently, as the Deputy Minister himself pointed out, much more to be done in improving the remand centres, jurisdiction over which was only transferred to the Ministry of Justice in 1999. There are five of these, three of which were visited by the Special Rapporteur in Baku (Bailov, Shuvelan and the detention facility of the Ministry of National Security), the fourth being located in the city of Ganja and the fifth in Naxçivan region. Limited resources dictated a very basic diet for inmates at Bailov and, presumably, other institutions. It was clear that the culture of the personnel who had until recently been employees of the Ministry of Internal Affairs was still in need of adjustment.

112. Two prisoners at Gobustan were found in quarantine, having finally been medically examined five days after admission. One appeared to have tuberculosis.

113. However, the main focus of the Special Rapporteur's mission was on the treatment of those in the hands of law enforcement officials, mainly agents of the Ministry of Internal Affairs. The key types of place of deprivation of liberty where such officials enjoy control are, on the one hand, regional police offices and local police units under them (police stations), where people may be held for up to three hours, and temporary detention facilities (IVS), where they may be held for up to three days but under certain circumstances for up to 10 or even 30 days.

114. The Special Rapporteur believes, on the basis of numerous testimonies he received, not least from those whose evident fear led them to request anonymity and who thus had nothing personally to gain from making their allegations, that torture or similar ill-treatment is widespread. Indeed, it is believed by so many to be automatic, that the mere threat or hint of adverse consequences for failure to comply with investigators' wishes (such as to sign a confession) is assumed to mean torture. For some, the mere fact of detention has the same implication.

115. The Special Rapporteur would have needed substantially more time in the country to be able to corroborate whether this perception is well founded, but it was clear that the detainees and investigating authorities frequently did nothing to dispel the association. The Special Rapporteur points out that the fear of physical torture may itself constitute mental torture.

116. The Special Rapporteur was also concerned at the fact that a person could be transferred from a remand centre back to police custody, albeit on the order of a prosecutor, thus enhancing the risk and, more palpably, the renewed fear of ill-treatment. This could, of course, lead to a perception of coercion even when questioning in the context of a continuing investigation was in fact taking place in a remand centre under Ministry of Justice jurisdiction.

117. In fact, it is the Special Rapporteur's intuitive impression that there has been a reduction in the incidence of physical torture in the past two years or so, especially as far as detainees held in connection with alleged criminal activities committed for political motives are concerned. Nevertheless, he was convinced by numerous testimonies he received in Gobustan and elsewhere that systematic, prolonged torture had been inflicted on any detainees thought to have been involved in the attempted escape from that institution in January 1999.

118. Under these circumstances, the palpable fear he encountered in those held in the remand centre at Ministry of National Security headquarters seemed understandable, particularly as the premises effectively serve as a police station, temporary detention facility and remand centre where persons can be held until conviction and sentencing. Also, the officer in charge of the detention cells made clear that he and his staff did not monitor what transpired between investigators and detainees during interrogation sessions. There was no question of any ill-treatment while detainees were in the detention area under his jurisdiction. Indeed, the regime the Special Rapporteur found there was exemplary.

119. The Special Rapporteur is aware that substantial legal reforms could have a significant impact on the problem. Ill-treatment has evidently been facilitated by the power of prosecutors to order detention in temporary detention facilities (under Ministry of Internal Affairs jurisdiction) for up to 30 days. Limited access to lawyers, especially by those who are either ignorant of the function of a lawyer or who have to rely on often poorly paid and motivated State-assigned lawyers and who may thus waive what rights they have (fear may also lead to such waiver), means that legal provisions for access do not sufficiently guarantee the safety of detainees.

B. Recommendations

120. Accordingly, the Special Rapporteur makes the following recommendations:

(a) The Government should ensure that all allegations of torture and similar ill-treatment are promptly, independently and thoroughly investigated by a body capable of prosecuting perpetrators;

(b) Prosecutors should regularly carry out inspections, including unannounced visits, of all places of detention. Similarly, the Ministries of Internal Affairs and of National Security should establish effective procedures for internal monitoring of the behaviour and discipline of their agents, in particular with a view to eliminating practices of torture and ill-treatment; the activities of such procedures should not be dependent on the existence of a formal complaint. In addition, non-governmental organizations and other parts of civil society should be allowed to visit places of detention and to have confidential interviews with all persons deprived of their liberty;

(c) Magistrates and judges, like prosecutors, should always ask a person brought from police custody how they have been treated and be particularly attentive to their condition;

(d) Where there is credible evidence that a person has been subjected to torture or similar ill-treatment, adequate compensation should be paid promptly; a system should be put in place to this end;

(e) Confessions made by a person under police detention without the presence of a lawyer should not be admissible as evidence against the person;

(f) Given the numerous reports of inadequate legal counsel provided by State-appointed lawyers, measures should be taken to improve legal aid services;

(g) Video and audio taping of proceedings in police interrogation rooms should be considered;

(h) Given the numerous situations in which persons deprived of their liberty were not aware of their rights, public awareness campaigns on basic human rights, in particular on police powers, should be considered;

(i) The Government should give urgent consideration to discontinuing the use of the detention centre of the Ministry of National Security, preferably for all purposes, or at least reducing its status to that of a temporary detention facility;.

(j) The Special Rapporteur welcomes the continuation of the provision of advisory services by the Office of the High Commissioner for Human Rights; he notes that the publication in the Professional Training Series entitled Human Rights and Law Enforcement: A Manual on Human Rights Training for the Police has been translated into Azeri; accordingly, the Government is invited to give favourable consideration to putting emphasis, in the technical cooperation programme, on training activities for the police and possibly investigators of the Ministry of National Security once recommendation (i) has been implemented;

(k) The Government should also consider requesting advisory services from the Office of the High Commissioner for Human Rights regarding training activities for officials from the General Prosecutor's Office;

(l) The Government is invited to consider favourably making the declaration provided for in article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, whereby the Committee against Torture could receive individual complaints from persons alleging non-compliance with the terms of the Convention. It is also invited similarly to consider ratifying the Optional Protocol to the International Covenant on Civil and Political Rights so that the Human Rights Committee can receive individual complaints.

Notes

[1] Called in Russian "investigation isolator" (sledstvenniy izolator) and commonly known by its Russian acronym, SIzo.

[2] *Gorodskoye otdeleniye politsii.*

[3] Article 177 of the Criminal Code states: "compelling to give testimony by means of application of threats or other illegal actions on the part of a person conducting an inquiry or preliminary investigation shall be punished by deprivation of freedom for a term not exceeding three years. The same actions combined with the application of force or with humiliation of the person interrogated shall be punished by deprivation of freedom for a term of three to eight years."

[4] "Article 126 - Intentional infliction of gross injury to health

"126.1. Intentional infliction of injury to health, i.e. infliction of injury dangerous for human life, or leading to loss of any organ or its function; derangement or any other impairment of health; long-term loss of earning capacity ... or to the loss of pregnancy; to a person's addiction to drugs, or irretrievable disfigurement of face shall be sentenced to deprivation of liberty for the term of 3 to 8 years.

"126.2. The same acts, if committed

"162.2.1. against two or more individuals; as well as repeated or committed by a group of individuals, an organized group or a criminal organization;

"162.2.2. against individual or his/her relatives in connection with the carrying out of his/her official or public duties;

"162.2.3. with special brutality, with gross torture or by order, as well as committed against an obviously helpless individual;

"162.2.4. by generally dangerous means, with intention to harm;

"162.2.5. with a view to using the organs or semen of the individual

– shall be sentenced to deprivation of liberty for the term of 6 to 11 years."

[5] "Article 127 - Intentional infliction of lesser injury to health

"127.1. Intentional infliction of lesser injury to health, but not dangerous for human life, and not leading to the consequences mentioned in article 126

- shall be sentenced to correctional labour for the term of 2 years, or by limitation of liberty for the same period, or by deprivation of liberty for the term of 2 years.

"127.2. The same acts, if committed

"127.2.1. against two or more individuals; as well as repeated or committed by a group of individuals, a group of people in conspiracy, an organized group or a criminal organization;

"162.2.2. against an individual or his/her relatives in connection with the carrying out of his/her official or public duties;

"162.2.3. with special brutality, with gross torture or by order, as well as committed against an obviously helpless individual;

"162.2.4. by generally dangerous means, with intention to harm;

"162.2.5. with a view to using the organs or semen of the individual

- shall be sentenced to deprivation of liberty for the term of 5 years."

[6] "133.2. The same acts, if committed

"133.2.1. in respect of two or more persons, kidnapped or captured person, with the use of a mercenary;

"133.2.2. in respect of a woman, by a person who was aware of her pregnancy;

"133.2.3. by a group of people, a group of people in conspiracy, an organized group or a criminal organization;

"133.2.4. in respect of a person who is under age or is in a helpless position, if the person [committing these acts] was aware of that fact;

"133.2.5. in respect of a person or his/her relatives in connection with the carrying out of his/her official or public duties

- shall be punished with imprisonment for the term of not less than 3 and not exceeding 7 years."

[7] "Azerbaijan: Impunity for Torture", Human Rights Watch, (vol. 11, No. 9 (D) August 1999) p. 34 and at <www.hrw.org/hrw/reports/1999/azerbaijan>.

[8] Information note (see para. 7).

[9] Amnesty International, "Azerbaijan - Comments on the Initial Report submitted to the United Nations Committee against Torture", (AI index: Eur 55/02/99 - October 1999), p. 9.

[10] Information note (see para. 7).

[11] Ministry of Internal Affairs, Order No. 80 (4 March 2000).

[12] Information note (see para. 7).

[13] Ibid.

[14] Ibid.

[15] Amnesty International, op. cit.

[16] Information note (see para. 7).

[17] See in particular: "Anticorruption in Transition: A Contribution to the Police Debate", World Bank, September 2000.